

1 Chief Judge Marsha J. Pechman  
2  
3  
4  
5  
6  
7  
8

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 UNITED STATES OF AMERICA,  
10 Plaintiff,

11 v.  
12

ANDREW "DREW" YIM,  
13  
14

Defendant.

NO. CR11-131 MJP

**ORDER DENYING MOTION TO  
DISMISS FORFEITURE OF  
\$366,210 IN UNITED STATES  
CURRENCY**

17 This matter comes before the Court upon the Motion of Be Bay Thi Luu to  
18 Dismiss the Forfeiture Action and Return Seized Property, specifically \$ 366,210 seized  
19 from a vehicle in which she was a passenger traveling in the State of Utah, pursuant to  
20 Title 18, United States Code, Section 983. Having reviewed Be Bay Thi Luu's motion at  
21 Docket No. 815, the Government's Response and Memorandum in Opposition with  
22 attachments thereto at Docket No. 824, and the records and files herein, the Court hereby  
23 DENIES the Motion to Dismiss the Forfeiture Action and Return Seized Property.

24 Movant Luu has chosen not to file a petition, pursuant to Title 21, United States  
25 Code, Sections 853(n)(2) and (n)(3), asserting a claim of ownership in \$366,210 in United  
26 States currency that is subject to ancillary forfeiture proceedings in the above-captioned  
27 matter, based upon the entry, by this Court, of a Preliminary Order of Forfeiture against  
28 Defendant ANDREW "DREW" YIM, which included the forfeiture of the \$ 366,210.

Instead, counsel for Movant Luu entered an appearance in the case and filed a Motion to

1 Dismiss Forfeiture Action and Return Seized Property.

2       Third parties who claim an interest in property are precluded from intervening in  
 3 the criminal trial or bringing an independent suit against the United States. Title 21,  
 4 United States Code, Section 853(k); *United States v. Nava*, 404 F.3d 1119, 1125 (9th Cir.  
 5 2005). The ancillary proceeding set detailed in Title 21, United States Code, Section  
 6 853(n) is the only avenue available for a third party such as Movant Luu to assert her  
 7 interest in property once an Indictment seeking forfeiture of the property has been filed.  
 8 In order to challenge the forfeiture in the criminal ancillary proceeding a petitioner should  
 9 file a petition pursuant to Title 21, United States Code, Section 853(n), asserting that she  
 10 rather than the government is entitled to the property pursuant to the provisions of Title  
 11 21, United States Code, Section 853(n)6).

12       Because Movant has, heretofore, failed to file a petition claiming an interest in the  
 13 \$366,210, Movant Luu has failed to establish the requisite statutory standing to challenge  
 14 the forfeiture, and therefore her motion must be denied.

15       However even if movant had filed a petition in the ancillary proceeding under Title  
 16 21, United States Code, Section 853, and therefore established standing to contest the  
 17 forfeiture in the ancillary proceedings, her motion would fail on the merits.

18       In the Motion to Dismiss Forfeiture Action and Return Seized Property, Movant  
 19 asserts that the Government failed to satisfy the notice requirements set forth in Title 18,  
 20 United States Code, Section 983(a)(1)(A)(i), specifically that Movant was not provided  
 21 with proper notice of seizure by the seizing agency within 60 days after the date of  
 22 seizure.

23       In its Response, the Government does not dispute the requirements set forth in  
 24 Section 983 regarding notice that must be sent by the seizing agency after seizure of  
 25 property, in the civil administrative forfeiture proceeding. The Government also does not  
 26 dispute that notice in this case was not sent within 60 days after the date of seizure.  
 27 However, the Government correctly points to further provisions of Section 983 that  
 28 permit the extension of the notice period for thirty days by a supervisory official in the  
 headquarters office of the seizing agency, Section 983(a)(1)(B), and subsequently by the

1 Court upon motion of the Government, Section 983(a)(1)(C), if the Government can  
 2 make the requisite showing that giving notice may have certain adverse results to its  
 3 underlying investigation. *See* Title 18, United States Code, Section 983(a)(1)(D). The  
 4 Government asserts that it has satisfied these proscribed requirements and attached copies  
 5 of documents establishing that timely agency delay was granted initially and that timely  
 6 ex parte orders of a magistrate judge of this Court were obtained allowing for the delay of  
 7 notice. The Government further attached a copy of the timely notice mailed to Movant  
 8 prior to the expiration date of the extended deadline notice set forth in the magistrate  
 9 judges' final order.

10 Movant Luu did not file a reply to the Government's Opposition to her motion, nor  
 11 did she file anything to factually rebut the Government's showing that the seizing agency,  
 12 the Drug Enforcement Administration, was in timely compliance with the notice  
 13 requirements set forth in Title 18, United States Code, Section 983(a), given the  
 14 extensions for delay of notice granted by the agency official and subsequently the court.  
 15 Movant's assertions to the contrary are without merit. Further, Movant's arguments are  
 16 based upon procedural requirements set forth in the statute governing civil forfeiture  
 17 proceedings. The asset at issue here was forfeited in a criminal forfeiture as part of the  
 18 sentence imposed on Andrew Yim. The Government obtained a protective order in the  
 19 criminal case allowing it to retain possession of the currency during the pendency of the  
 20 criminal case without the necessity of filing a civil forfeiture case, and Movant does not  
 21 claim any procedural defects in the criminal forfeiture proceeding.

22 Movant does assert that the Government has failed to establish any nexus between  
 23 the seized property and any illegal activity. However, on October 31, 2011, this Court,  
 24 upon the motion of the United States, entered a Protective Order on the grounds that the  
 25 United States had established probable cause that the \$366,210 in United States currency  
 26 was subject to forfeiture as proceeds of the charged Conspiracy to Distribute Controlled  
 27 Substances, as evidenced by the inclusion of the currency in the First Superseding  
 28 Indictment returned by the Grand Jury. Further, the Court, in its Preliminary Order of  
 Forfeiture, found that the \$366,210 in United States currency was subject to forfeiture to

1 the United States because it constitutes, or was derived from, proceeds obtained directly,  
 2 or indirectly, as a result of the charged Conspiracy to Distribute Controlled Substances,  
 3 based upon the guilty plea and the plea agreement of Andrew Yim. Because of these  
 4 determinations, the assertion that the Government has failed to establish a nexus between  
 5 the seized property and illegal activity is without merit.

6 The government has met its burden, through the findings of the Grand Jury in the  
 7 First Superseding Indictment and, in particular, the plea agreement of Andrew Yim and  
 8 the Preliminary Order of Forfeiture, also signed by Yim, that the forfeited currency  
 9 constituted proceeds of a conspiracy to distribute controlled substances. Movant has had  
 10 an opportunity to challenge those findings in the ancillary proceedings, by filing a timely  
 11 petition in those proceedings, and then establishing at a hearing that the funds were  
 12 derived from a legitimate source and that she had a superior interest in them based upon  
 13 her ownership of those funds. This she has failed to do.

14 **CONCLUSION**

15 For the reasons stated above, the Court DENIES the Motion to Dismiss Forfeiture  
 16 Action and Return Seized Property. Movant lacks statutory standing to contest the  
 17 forfeiture in this ancillary proceeding based upon her failure to file a petition pursuant to  
 18 Title 21, United States Code, Section 853(n), and, further, her assertions that the  
 19 Government has not complied with Title 18, United States Code, Section 983, or that the  
 20 Government has not established a nexus between the \$366,210 in United States currency  
 21 and any illegal activity, are without merit. The Government fully complied with the  
 22 applicable statutory notice requirements and had already established a sufficient nexus  
 23 between the currency and illegal conduct.

24 The Clerk is Ordered to send copies of this Order to counsel for all parties of  
 25 record.

26 DATED this 10th day of August, 2012.

27  
 28   
 Marsha J. Pechman  
 United States District Judge